

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHARLES BROOKS,  
Plaintiff,  
v.  
VALENZUELA,  
Defendant.

Case No. [18-cv-01528-JSW](#)

**ORDER DENYING LEAVE TO FILE A  
SECOND AMENDED COMPLAINT;  
GRANTING EXTENSION OF TIME**

Re: Dkt. Nos. 50, 51, 52

Plaintiff is an inmate at San Quentin State Prison ("SQSP"). Proceeding pro se, he filed this civil rights case under 42 U.S.C. § 1983. Defendants' summary judgment motion was granted in part. Specifically, all of the claims save one were found to be unexhausted. The only exhausted claim was against Valenzuela for preventing him from attending religious services on one occasion. Valenzuela was ordered to file, and has filed, a motion for summary judgment on the merits of this claim.

Plaintiff moved for leave to file a second amended complaint and has submitted a proposed second amended complaint. Defendant was ordered to show cause why it should not be allowed and has shown that allowing it to be filed would be futile. The second amended complaint adds claims against a supervisor, the SQSP Warden Davis, but does not allege Davis's personal involvement in or otherwise caused the alleged deprivation, as is required for supervisory liability. *See Henry A. v. Willden*, 678 F.3d 991, 1003-04 (9th Cir. 2012). Davis's failure to grant his administrative grievance does not state a cognizable claim for relief. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). Plaintiff also offers no reason for failing to bring this claim earlier.

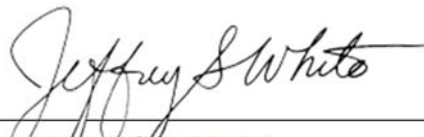
1 Plaintiff's proposed second amended complaint also seeks to renew claims against  
2 defendant Thompson that were already found to be unexhausted. Plaintiff states that he  
3 inadvertently misnamed Thompson in one of his grievances.<sup>1</sup> The failure to name Thompson  
4 properly in the grievance runs afoul of the prison regulations governing exhaustion, Cal. Code  
5 Regs., tit. 15, § 3084.2(a) and (a)(3), which regulations control whether or not the claim was  
6 "properly" exhausted within the meaning of the PLRA, *see Jones v. Bock*, 549 U.S. 199, 217-18  
7 (2007). Plaintiff cites no authority that non-exhaustion is excused where an inmate names the  
8 wrong Defendant in a grievance, even when he does so inadvertently.

9 Because the second amended complaint adds claims that are not viable, allowing plaintiff  
10 to file it would be futile. Accordingly, leave to file the second amended complaint is DENIED.

11 Plaintiff's motion for an extension of time in which to file an opposition to Valenzuela's  
12 motion for summary judgment, to and including September 19, 2019, is GRANTED. Valenzuela  
13 **shall** file a reply brief within 14 days of the date any opposition is filed.

14 **IT IS SO ORDERED.**

15 Dated: August 26, 2019

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18 JEFFREY S. WHITE  
United States District Judge

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<sup>1</sup> This grievance in any event only raises one of the instances in which Thompson allegedly  
violated Plaintiff's rights.

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 26, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Charles Brooks ID: E90514  
San Quentin State Prison  
San Quentin, CA 94974

Dated: August 26, 2019

Susan Y. Soong  
Clerk, United States District Court



By: \_\_\_\_\_  
Kelly Collins, Deputy Clerk to the  
Honorable JEFFREY S. WHITE